

Service Date: April 13, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Investigation)	UTILITY DIVISION
into U S WEST Communications, Inc.'s)	DOCKET NO. D97.5.87
Compliance with Section 271(c) of the)	
Telecommunications Act of 1996.)	ORDER NO. 5982c

PROCEDURAL ORDER

On May 20, 1997, the Montana Public Service Commission ("Commission" or "PSC") initiated an investigation to determine the extent of U S WEST, Communications, Inc.'s (U S WEST) compliance with § 271 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified as amended in scattered sections of 47 U.S.C.) (the "Act" or "1996 Act"). The Commission opened this Docket for the purpose of receiving information from U S WEST and comments from interested persons regarding U S WEST's compliance with 47 U.S.C. § 271. In Order No. 5982 in this Docket, the Commission directed U S WEST to file its § 271 supporting materials with the Montana Commission at least 90 days before filing them with the Federal Communications Commission (FCC).

On March 30, 1998, U S WEST filed materials to support its intended application with the FCC pursuant to 47 U.S.C. § 271. U S WEST's filing included a Motion for Protective Order, a Motion for Procedural Order, and a document titled "Notice of Intention to File Section 271(c) Application with the FCC and Request for Commission to Verify U S WEST Compliance with Section 271(c)."

Therefore, pursuant to U S WEST's motion, the Commission issues this Procedural Order. The Commission has set forth a firm schedule in this Procedural Order. The Commission staff may amend the procedural schedule when the amendment does not alter the scheduled hearing date. The Commission will reconsider the date set for hearing only upon good cause shown.

Introduction

Regional Bell operating companies (RBOCs)--U S WEST is an RBOC--may not offer in-region interLATA toll until the FCC has determined they have met the requirements of 47 U.S.C. § 271 following a review of their compliance with § 271(c). Section 271(d)(2)(B) requires the FCC to consult with state commissions to verify the compliance of the RBOC with the requirements of § 271(c)(2)(B), the 14-point "competitive checklist." The FCC will allow state commissions only 20 days for their review of the RBOC's compliance following the RBOC's "271 Application."

Because the allotted 20 days is insufficient for an adequate review of U S WEST's compliance, the Commission directed U S WEST to file its supporting materials 90 days prior to filing its 271 Application with the FCC. U S WEST could, therefore, file its 271 Application with the FCC upon the expiration of this Commission's prescribed 90-day review period. This would afford the Commission a total of 110 days for review of U S WEST's 271 Application. U S WEST did not file any relevant information in this Docket prior to its filing of supporting materials on March 30, 1998. U S WEST's filing requests that the Commission issue a verification that it has met the requirements of § 271(c)(2)(B) and a recommendation to the FCC that it approve U S WEST's application to provide interLATA services to its Montana customers.

U S WEST's proposed procedural order contains an ambitious procedural schedule which, if adopted, would require the Commission to produce an order including a recommendation to the FCC within 90 days of the filing--by June 30, 1998. However, the FCC does not require the Commission to make a recommendation to the FCC prior to U S WEST's § 271 filing with the FCC. The FCC will accept such recommendations for 20 days following the FCC application--in this case, by July 19, 1998.

The Montana Consumer Counsel, AT&T Communications of the Mountain States, Inc., and Sprint Communications Co., L.P. all objected to the short period of time for discovery that U S WEST proposed, with MCC indicating that this brief time for submitting discovery would be insufficient for MCC to perform its constitutional obligations. On April 6, 1998, U S WEST filed a response to MCC's Motion for extension of time, stating that U S WEST agreed to

support MCC's Motion and to delay its FCC filing if the Commission will make its decision and issue a final order by July 30, 1998. On April 7, 1998, the Commission agreed to issue its order in this matter by July 30, 1998, as proposed by MCC and U S WEST. Thus, the Commission will have a total of 120 days to determine a recommendation and the Procedural Schedule can better accommodate the needs of all parties.

Therefore, under the authority of ARM 38.2.2702, the Commission enters this Procedural Order setting forth the procedure to be followed in Docket No. D97.5.87. This order is effective immediately and remains effective until modified by the Commission.

Intervention

1. In this order the term "parties" includes the applicant, U S WEST Communications, Inc., and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission.

2. The Commission granted intervention to the Montana Consumer Counsel, Eclipse Communications Corp., AT&T Communications of the Mountain states, Inc., MCI Telecommunications Corporation, Montana Independent Telecommunications Systems, Skyland Technologies, Inc., Sprint Communications Company L.P., and the Telecommunications Resellers Association. The deadline for filing Petitions to Intervene was June 10, 1997.

Petitions to Intervene filed after June 10, 1997 must comply with ARM 38.2.2401 through 38.2.2406. On April 3, 1998, Ronan Telephone Company, Hot Springs Telephone Company, and the Montana Telephone Association filed petitions for late intervention. In the work session held on April 7, 1998, the Commission granted petitions for late intervention. These parties are granted general intervention. Such intervention will not unduly broaden the issues in this proceeding. Further intervention is permitted until April 14, 1998. See Attachment "A".

Service and Filing

3. Copies of all pleadings, motions, discovery requests and responses, prefiled testimony, briefs and all other documents shall be filed with the Commission and served on all parties and other entities and individuals on the attached service list. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably

designated by the attorney of record. The parties may limit service of discovery responses to service on the party making the discovery request, the PSC, and parties specifically requesting service of discovery responses.

4. Filing by means of telephonic facsimile will not suffice for timely filing. Filing and service deadlines are the dates set for filing of the requisite number of paper copies in the offices of the Commission.

5. An original and seven (7) copies of all discovery must be filed with the PSC, and an original and eleven (11) copies of all other documents, except proprietary documents. Only one copy of proprietary documents shall be filed -- on yellow paper. Service to other parties and to the PSC shall be by overnight mail or hand-delivery in lieu of overnight mail.

Schedule

6. The deadlines for service and filing of documents in this Docket (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment "A" which is attached hereto and incorporated herein by this reference.

Discovery

7. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as "data requests" (informal interrogatories).

8. The Commission directs all parties to prepare data requests according to the following guidelines:

a. Parties must assign their data requests a request number (e.g., MDU-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through -008 to MDU, PSC-009 through -016 to MCC, and PSC-017 through 019 to MDU).

b. All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects.

Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

c. Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

d. Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts

Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass

Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

9. The party receiving the written discovery or data request has three business days from receipt to file any objections it has to the request(s). Notice of the objection shall be served upon the Commission and all parties (as provided in the paragraph above). The Commission may dispose of such objections by prompt ruling or may schedule argument. Failure to timely object will be a waiver of objections.

10. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must serve its written objection(s) within three business days after receipt of such response (as provided in the paragraph above). The PSC may dispose of such objection(s) by prompt ruling, or may schedule argument. The PSC will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

11. Parties are encouraged to attempt to resolve all discovery disputes between themselves, before filing objections. All motions regarding discovery should contain a statement explaining the efforts taken to resolve the issue informally, and a photocopy or restatement of the requests and responses.

12. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause explaining why the request was not submitted within the time period allowed.

13. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding or parts thereof.

14. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be governed by the applicable Montana Rules of Civil Procedure. *See* ARM 38.2.3301 through 38.2.3305.

Testimony and Evidence

15. The PSC contemplates a complete identification of issues before the hearing. The PSC will closely scrutinize new issues or data in new areas introduced at the time of hearing, and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony, or proceedings.

16. At hearing, the PSC will admit into the record all prefiled direct, answer and rebuttal testimony upon motion of the proponent, without the necessity of the witness reading the testimony into the record. This testimony will be an exhibit and not otherwise entered into the transcript.

17. All proposed exhibits and prefiled written testimony shall be marked for the purpose of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred manner of identifying exhibits.

18. When cross-examination is based on a document not previously filed with the Commission, copies of the document will be made available to the Commissioners, parties, and

staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the PSC staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

19. Parties may be permitted to present live rebuttal testimony only by leave of the PSC or presiding officer.

20. The Montana Rules of Evidence in effect at the time of the hearing will apply.

21. Any party to this proceeding responding to written discovery from any other party or the PSC shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, *see* Rule 32, M.R.Civ.P. regarding admission of depositions).

Prehearing Motions and Conferences

22. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs, without oral argument, unless otherwise requested by a party and approved by the PSC. All parties are strongly encouraged to attempt to resolve procedural disputes informally.

23. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, distribution and marking of written testimony and exhibits prior to the hearing, and other procedural matters as may aid in the disposition of the proceeding.

24. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of U S WEST Communications, Inc., and other regulated utilities at any time.

Prehearing Memoranda

25. Each party and the Commission staff will serve a prehearing memorandum on the Commission and all formal parties in this Docket on or before June 26, 1998, containing the following information:

- a. Each and every Data Response and all other exhibits that it intends to offer into evidence at the hearing;
- b. The name of the witness responsible for the Data Response or through which the exhibit will be offered; and
- c. The issue to which the Data Response or document is relevant.

In addition, all parties (but not the Commission staff) are required to include the following in their prehearing memoranda:

- d. A list of all issues, contested and uncontested;
- e. Witnesses the party will call to testify;
- f. A proposed order of witnesses (including whether each witness would simultaneously offer both direct and rebuttal testimony);
- g. A proposed order of cross-examination; and
- h. Identification and explanation of any special scheduling or witness sequence needs which a party requests to accommodate scheduling conflicts.

Amendment

26. The provisions of this Order may only be amended by PSC action, or PSC staff action pursuant to delegated authority. The PSC shall maintain continuing jurisdiction of the matters encompassed by this Order during the course of this Docket.

DONE AND DATED this 13th day of April, 1998 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair
 BOB ANDERSON, Commissioner
 DANNY OBERG, Commissioner
 BOB ROWE, Commissioner

ATTACHMENT "A"

Procedural Schedule

Docket No. D97.5.87, Order No. 5982 (insert letter)

<u>Deadline*</u>	<u>Action</u>
April 14, 1998	Extended Intervention date
April 20, 1998	Comments on the completeness of U S WEST's filing due
May 1, 1998	Data Requests to U S WEST due
May 11, 1998	U S WEST responses to May 1 Data Requests due
May 21, 1998	Intervenor testimony due
June 3, 1998	Data requests to Intervenor due (including discovery between Intervenor)
June 11, 1998	Intervenor responses to June 3 Data Requests due
June 19, 1998	Rebuttal testimony due
June 26, 1998	Prehearing Memoranda due
June 26, 1998	Prehearing Comments due from interested persons who are not actively participating in discovery due
June 29, 1998	Prehearing Conference (tentative)
June 30, 1998	Hearing to Commence in Docket No. D97.5.87.

*All deadlines are receipt dates.